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15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN FRANCISCO DIVISION**  
18

19 DAVID M. CATHCART, JAMES H.  
WHITEHEAD, ROBERT W. DECKER, DALE  
20 BALDISSERI, individually, and on behalf of all  
others similarly situated,

21 Plaintiff,

22 v.

23 SARA LEE CORPORATION, SARA LEE  
24 BAKERY GROUP, EARTHGRAINS BAKING  
COMPANIES, INC. (formerly sued as DOE 1)  
25 and DOES 2 through 20,

26 Defendants.  
27  
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Case No. CV 09-5748 MMC

**STIPULATION FOR LEAVE TO  
MODIFY THE SCHEDULING ORDER  
TO CORRECT PARTIES' OMISSION  
OF REPLY DATE, EXTEND REPLY  
AND HEARING DATES**

**~~PROPOSED~~ ORDER**

The Honorable Maxine M. Chesney

Complaint filed: December 8, 2009

STIPULATION TO MODIFY SCHEDULING ORDER TO EXTEND DATES  
CASE NO. CV 09-5748 MMC

1 The parties stipulate as set forth in the numbered paragraphs below, based on the  
 2 following facts:

3 A. The Scheduling Order (Dkt. No. 33) set initial deadlines in this case. The Order  
 4 scheduled, among other things, dates for filing motions and cross-motions for  
 5 summary judgment on two affirmative defenses, dates for oppositions, and dates for  
 6 replies.

7 B. The parties stipulated to extensions of those deadlines because, among other things,  
 8 more time was needed in order for Defendants to produce documents pertinent to the  
 9 motions.

10 **C. However, in stipulating to the extended dates, the parties erroneously omitted**  
 11 **the date for filing the reply in support of Plaintiffs' cross-motion.**

12 D. This stipulation is to correct that error, and to afford each party two weeks to file  
 13 replies, rather than one. These are very important motions, and the parties believe the  
 14 determination of them will best be served by the additional week for replies.

15 E. Note that Defendants decided to file a motion on only one of the two affirmative  
 16 defenses, Labor Code § 514. Plaintiffs will follow suit, moving on only that one.  
 17 Defendants have filed their motion. Plaintiffs' opposition and cross-motion are due  
 18 September 9, 2011. This stipulation does not seek an extension of that deadline.

19 F. The stipulation below proposes to set the hearing on the motions on October 28,  
 20 2011. The current deadline to complete mediation is that very date. The parties  
 21 believe a successful mediation depends on a ruling on the motions. Therefore, they  
 22 propose to extend the mediation deadline by three weeks, to November 18, 2011.

23 **G. The current deadlines on the motion and cross-motion are as follows:**

24 a. Deadline for filing Defendants' **motion(s)** for summary judgment on Labor  
 25 Code § 514 (and Motor Carrier Act exemptions): August 19, 2011  
 26 *(This August 19 deadline was met.)*

27 b. Deadline for filing Plaintiffs' **opposition** to above motion(s) and for filing  
 28 **cross-motion:** September 9, 2011;

- c. Deadline for **reply on Defendants' motion(s) and opposition to cross-motion:** September 16, 2011;
- d. Deadline for **reply on Plaintiffs' cross-motion:** NONE
- e. **Hearing** on above motion and cross-motion: October 7, 2011, 9:00 a.m.
- f. Deadline to complete mediation October 28, 2011

H. Note that the discovery and motion deadlines have previously been continued by stipulated order (see Docket Nos. 35, 44, 52, 56, 58 and 60). The deadline to complete mediation has also been continued by stipulated order, to fall after the hearing on the parties' motions for summary judgment (see Docket Nos. 54, 58, and 60). The current deadline for the parties to complete mediation: October 28, 2011.

I. Note also that the deadline for Plaintiffs to file a motion for class certification is not until March 23, 2012. The hearing on the motion for class certification is scheduled for July 20, 2012. There is no trial date scheduled, but after the hearing on the motion for class certification, a Case Management Conference is scheduled for August 31, 2012. This stipulation does not seek to move those dates.

WHEREFORE, THE PARTIES STIPULATE and request that the Court order that the Scheduling Order (Docket No. 33) be modified to reflect the deadlines listed below, or to set forth later deadline chosen by the Court:

- 1. Deadline for **reply on Defendants' motion(s) and opposition to cross-motion:**  
Continue from September 16, 2011 to September 23, 2011.
- 2. Deadline for **reply on Plaintiffs' cross-motion:**  
There is no deadline. Set deadline for October 7, 2011.
- 3. **Hearing** on above motion and cross-motion:  
Continue from October 7, 2011 to October 28, 2011,  
or such other date as is convenient to the Court.
- 4. Deadline to complete mediation:  
Continue from October 28, 2011 to November 18, 2011.

1 In compliance with General Order No. 45 (X), as filing party, Defendants attest that all  
2 signatories below concur in the filing of this document.

3 DATED: September 7, 2011

MAYER BROWN LLP  
JOHN NADOLENCO  
JEROME JAUFFRET  
KRISTEN ROWSE

6 BY: /s/ John Nadolenco  
John Nadolenco  
7 Attorneys for Defendants  
8 SARA LEE CORPORATION, SARA LEE  
BAKERY GROUP and EARTHGRAINS  
9 BAKING COMPANIES, INC.

10 DATED: September 6, 2011


SPIRO MOSS LLP

11 BY: /s/ Ira Spiro  
12 Attorneys for Plaintiffs

13 **~~PROPOSED~~ ORDER**

14 SO ORDERED as stated in paragraphs 1 through 4 above; specifically, the hearing on the motions  
15 is continued to October 28, 2011, at 9:00 a.m.

16 DATED: September 8, 2011

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MAXINE M. CHESNEY  
18 United States District Judge  
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